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11 Attorneys for Defendants
12 THE HERMAN KISHNER TRUST; IRWIN
KISHNER, as Trustee for the Herman Kishner
13 Trust; JERRY ENGEL, as Trustee for the
Herman Kishner Trust; BANK OF AMERICA,
14 N.A., as Trustee for the Herman Kishner Trust;
MARYLAND SQUARE SHOPPING CENTER, LLC
15

16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 PACIFIC EMPLOYERS INSURANCE COMPANY,
a Pennsylvania corporation,

Case No. 2:10-cv-897-JCM-(PAL)

ANSWER

19 Plaintiff,
20

21 vs.

22 THE HERMAN KISHNER TRUST; IRWIN
KISHNER, as Trustee for the Herman Kishner
Trust; JERRY ENGEL, as Trustee for the
23 Herman Kishner Trust; BANK OF AMERICA,
N.A., as Trustee for the Herman Kishner Trust;
24 MARYLAND SQUARE SHOPPING CENTER,
LLC; MARYLAND SQUARE, LLC; HERMAN
25 KISHNER dba Maryland Square Shopping
Center; and DOES 1-25, inclusive,
26

Defendants.
27 _____/

1 Defendants, THE HERMAN KISHNER TRUST; IRWIN KISHNER, as Trustee for the
2 Herman Kishner Trust, JERRY ENGEL, as Trustee for the Herman Kishner Trust; BANK OF
3 AMERICA, N.A., as Trustee for the Herman Kishner Trust, and MARYLAND SQUARE SHOPPING
4 CENTER, LLC, by their attorneys, Steven J. Parsons of LAW OFFICES OF STEVEN J. PARSONS, and
5 Robert G. Russell, Jr., and Scott R. Omohundro of PROCOPIO CORY HARGREAVES AND SAVITCH, LLP,
6 answer Plaintiff PACIFIC EMPLOYERS INSURANCE COMPANY'S Complaint for Declaratory
7 Relief and Equitable Reimbursement as follows:

8 SUBJECT MATTER JURISDICTION

9 1. Defendants do not have sufficient information upon which to base a belief as
10 to the truth or falsity of the allegations of Paragraph 1 and, based thereon, deny generally and
11 specifically each and every such allegation.

12 VENUE

13 2. Defendants admit the allegations of Paragraph 2.

14 PARTIES

15 3. Defendants do not have sufficient information upon which to base a belief as
16 to the truth or falsity of the allegations of Paragraph 3 and, based thereon, deny generally and
17 specifically each and every such allegation.

18 4. Defendants admit the allegations of Paragraph 4.

19 5. Defendants admit the allegations of Paragraph 5.

20 6. Defendants admit the allegations of Paragraph 6.

21 7. Defendants admit the allegations of Paragraph 7 to the extent that Defendant
22 Bank of America is incompletely named and is in fact properly denominated as Bank of
23 America, N.A., which is a Delaware corporation, and that it is administering the Kishner Trust
24 in Nevada, but Defendants generally and specifically each and every such allegation of the
25 balance of the paragraph.

26 8. Defendants admit the allegations of Paragraph 8.

27 9. Defendants do not have sufficient information upon which to base a belief as

1 to the truth or falsity of the allegations of Paragraph 9 and, based thereon, deny generally and
2 specifically each and every such allegation.

3 10. Defendants admit the allegations of Paragraph 10.

4 11. No response of Defendants is required as to the allegations of Paragraph 11.

5 12. Defendants do not have sufficient information upon which to base a belief as
6 to the truth or falsity of the allegations of Paragraph 12 and, based thereon, deny generally
7 and specifically each and every such allegation.

8 GENERAL ALLEGATIONS

9 13. In response to the allegations of Paragraph 13, Defendants admit that PEIC
10 issued two consecutive annual "Dry Cleaners and Laundries" insurance policies to a Nevada
11 entity called Shapiro Brothers Investment Corp. dba Al Phillips The Cleaner ("Shapiro
12 Brothers"), admit that both of those policies bear the identifying designation DLP DO 52 22
13 24 2, admit that the first of those two insurance policies was in effect from July 1, 1981 to
14 July 1, 1982 ("1981 PEIC Policy") and admit that the second of those two insurance policies
15 was in effect from July 1, 1982 ("1982 PEIC Policy"). Defendants do not have sufficient
16 information upon which to base a belief as to the trust or falsity of the remaining allegations
17 of said Paragraph 13 and, based thereon, deny generally and specifically each and every such
18 allegation.

19 14. Defendants admit the allegations of Paragraph 14.

20 15. Defendants admit the allegations of Paragraph 15.

21 16. Defendants admit the allegations of Paragraph 16.

22 17. Defendants admit the allegations of Paragraph 17.

23 18. No response of Defendants is required as to the allegations of Paragraph 18.

24 19. Defendants admit the allegations of Paragraph 19.

25 20. Defendants admit the allegations of Paragraph 20.

26 21. Defendants do not have sufficient information upon which to base a belief as
27 to the truth or falsity of the allegations of Paragraph 21 and, based thereon, deny generally

1 and specifically each and every such allegation.

2 22. Defendants admit the allegations of Paragraph 22, although Defendants aver
3 that the date of the subject letter from Jason Gerber sent to Resolute Management is dated
4 May 18, 2009.

5 23. Defendants admit the allegations of Paragraph 23.

6 24. Defendants deny generally and specifically each and every allegation of
7 Paragraph 24.

8 RESPONSE TO FIRST CAUSE OF ACTION

9 (Declaratory Relief Regarding the Absence of Insured Status for the Trust Defendants)

10 25. By way of response to the allegations of Paragraph 25, Defendants re-allege and
11 incorporate herein by reference the responses to the allegations of Paragraphs 1-24.

12 26. Defendants admit the allegations of Paragraph 26.

13 27. In response to the allegations of Paragraph 27, Defendants do not have
14 sufficient information upon which to base a belief as to the truth or falsity of the allegation that
15 with regard to the 1981 PEIC Policy, PEIC has no internal records or documentation creating
16 or identifying insured status for the Kishner Trust, or for any trustees of the Kishner Trust.
17 Defendants deny generally and specifically each and every other allegation of said Paragraph
18 27.

19 28. In response to the allegations of Paragraph 28, Defendants do not have
20 sufficient information upon which to base a belief as to the truth or falsity of the allegation that
21 with regard to the 1982 PEIC Policy, PEIC has not internal records or documentation creating
22 or identifying insured status for the Kishner Trust, or for any trustees of the Kishner Trust.
23 Defendants deny generally and specifically each and every other allegation of said Paragraph
24 28.

25 29. Defendants deny generally and specifically each and every allegation of
26 Paragraph 29.

27 30. Defendants deny generally and specifically each and every allegation of

1 Paragraph 30.

2 RESPONSE TO SECOND CAUSE OF ACTION

3 (Declaratory Relief Regarding the Absence of Insured Status for the MSSC)

4 31. By way of response to the allegations of Paragraph 31, Defendants re-allege and
5 incorporate herein by reference the responses to the allegations of Paragraphs 1-30.

6 32. Defendants admit the allegations of Paragraph 32.

7 33. Defendants do not have sufficient information upon which to base a belief as
8 to the truth or falsity of the allegations of Paragraph 33 and, based thereon, deny generally
9 and specifically each and every such allegation.

10 34. In response to the allegations of Paragraph 34, Defendants admit that PEIC has
11 been provided with an endorsement form referring to "Maryland Square Shopping Center" as
12 an additional-insured under the 1981 PEIC Policy, and that as defined in Paragraph 8, MSSC
13 was created in 1999, and Defendants do not have sufficient information upon which to base
14 a belief as to the truth or falsity of the rest of the allegations in the balance of the Paragraph
15 and thereon, deny generally and specifically each and every such allegation.

16 35. Defendants admit the allegations of Paragraph 35.

17 36. Defendants do not have sufficient information upon which to base a belief as
18 to the truth or falsity of the allegations of Paragraph 36 and, based thereon, deny generally
19 and specifically each and every such allegation.

20 37. Defendants deny generally and specifically each and every allegation of
21 Paragraph 37.

22 38. Defendants deny generally and specifically each and every allegation of
23 Paragraph 38.

24 RESPONSE TO THIRD CAUSE OF ACTION

25 (Declaratory Relief Regarding the Absence of Insured Status for Maryland Square)

26 39. By way of response to the allegations of Paragraph 39, Defendants re-allege and
27 incorporate herein by reference the responses to the allegations of Paragraphs 1-38.

1 to the truth or falsity of the allegations of Paragraph 49 and, based thereon, deny generally
2 and specifically each and every such allegation.

3 50. Defendants do not have sufficient information upon which to base a belief as
4 to the truth or falsity of the allegations of Paragraph 50 and, based thereon, deny generally
5 and specifically each and every such allegation.

6 51. In response to the allegations of Paragraph 51, Defendants admit that PEIC has
7 been provided with an endorsement form referring to "Maryland Square Shopping Center" as
8 an additional-insured under the 1981 PEIC Policy. Defendants do not have sufficient
9 information upon which to base a belief as to the truth or falsity of the remaining allegations
10 of Paragraph 51 and, based thereon, deny generally and specifically each and every such
11 allegation.

12 52. Defendants deny generally and specifically each and every allegation of
13 Paragraph 52.

14 53. Defendants deny generally and specifically each and every allegation of
15 Paragraph 53.

16 RESPONSE TO FIFTH CAUSE OF ACTION

17 (Alternative Declaratory Relief Regarding Lack of Coverage
18 for MSSC in the Underlying Actions)

19 54. In response to the allegations of Paragraph 54, Defendants re-allege and
20 incorporate herein by reference the responses to the allegations of Paragraphs 1-53.

21 55. Defendants deny generally and specifically each and every allegation of
22 Paragraph 55.

23 56. Defendants do not have sufficient information upon which to base a belief as
24 to the truth or falsity of the allegations of Paragraph 56 and, on that basis, deny generally and
25 specifically each and every such allegation. Defendants affirmatively allege that the 1981
26 PEIC Policy speaks for itself.

27 57. In response to the allegations of Paragraph 57, Defendants admit that the

Underlying Actions, and each of them, allege that Defendants, and each of them, are liable for damage to real property. Defendants deny generally and specifically each and every other allegation of said Paragraph 57.

58. In response to the allegations of Paragraph 58, Defendants admit that Maryland Square Shopping Center, LLC did not exist prior to 1999 and that said entity did not have any ownership interest in the Property until 1999. Defendants deny generally and specifically each and every other allegation of said Paragraph 58.

59. Defendants deny generally and specifically each and every allegation of Paragraph 59.

RESPONSE TO SIXTH CAUSE OF ACTION

(Alternative Declaratory Relief Regarding Lack of Coverage
for Maryland Square in the Underlying Actions)

60. In response to the allegations of Paragraph 60, Defendants re-allege and incorporate by reference their responses to the allegations of Paragraphs 1-59.

61. Defendants deny generally and specifically each and every allegation of Paragraph 61.

62. Defendants do not have sufficient information upon which to base a belief as to the truth or falsity of the allegations of Paragraph 62 and, based thereon, deny generally and specifically each and every such allegation. Defendants affirmatively allege that the 1981 PEIC Policy speaks for itself.

63. In response to the allegations of Paragraph 63, Defendants admit that the Underlying Actions, and each of them, allege that Defendants, and each of them, are liable for damage to real property. Defendants deny generally and specifically each and every other allegation of said Paragraph 63.

64. In response to the allegations of Paragraph 64, Defendants admit that Maryland Square did not exist prior to 2005, and did not have any ownership interest in the Property until 2005. Defendants deny generally and specifically each and every other allegation of

Paragraph 64.

65. Defendants deny generally and specifically each and every allegation of Paragraph 65.

RESPONSE TO SEVENTH CAUSE OF ACTION

(Alternative Declaratory Relief Regarding Lack of Coverage
for Herman Kishner DBA MSSC in the Underlying Actions)

66. In response to the allegations of Paragraph 66, Defendants re-allege and incorporate by reference their responses to the allegations of Paragraphs 1-65.

67. Defendants deny generally and specifically each and every allegation of Paragraph 67.

68. Defendants do not have sufficient information upon which to base a belief as to the truth or falsity of the allegations of Paragraph 68 and, based thereon, deny generally and specifically each and every such allegation. Defendants affirmatively allege that the 1981 PEIC Policy speaks for itself.

69. In response to the allegations of Paragraph 69, Defendants admit that the Underlying Actions, and each of them, allege that Defendants, and each of them, are liable for damage to real property. Defendants deny generally and specifically each and every other allegation of Paragraph 69.

70. Defendants do not have sufficient information upon which to base a belief as to the truth or falsity of the allegations of Paragraph 70 and, based thereon, deny generally and specifically each and every such allegation.

71. Defendants deny generally and specifically each and every allegation of Paragraph 71.

RESPONSE TO EIGHTH CAUSE OF ACTION

(Alternative Declaratory Relief Regarding Lack of Coverage Based on Absence of Tender
by Maryland Square and Herman Kishner DBA MSSC)

72. In response to the allegations of Paragraph 72, Defendants re-allege and

1 incorporate by reference their responses to the allegations of Paragraphs 1-71.

2 73. Defendants do not have sufficient information upon which to base a belief as
3 to the truth or falsity of the allegations of Paragraph 73 and, based thereon, deny generally
4 and specifically each and every such allegation.

5 74. Defendants deny generally and specially each and every allegation of Paragraph
6 74.

7 RESPONSE TO NINTH CAUSE OF ACTION

8 (Alternative Declaratory Relief Regarding Timing of Property Damage)

9 75. In response to the allegations of Paragraph 75, Defendants re-allege and
10 incorporate by reference their responses to the allegations of Paragraphs 1-74.

11 76. Defendants deny generally and specifically each and every allegation of
12 Paragraph 76.

13 77. Defendants do not have sufficient information upon which to base a belief as
14 to the truth or falsity of the allegations of Paragraph 77 and, based thereon, deny generally
15 and specifically each and every such allegation. Defendants affirmatively allege that the 1981
16 PEIC Policy speaks for itself.

17 78. In response to the allegations of Paragraph 78, Defendants admit that the
18 Underlying Actions, and each of them, allege that Defendants, and each of them, are liable
19 for damage to real property. Defendants deny generally and specifically each and every other
20 allegation of Paragraph 78.

21 79. Defendants admit the allegations of Paragraph 79.

22 80. Defendants deny generally and specifically each and every allegation of
23 Paragraph 80.

24 RESPONSE TO TENTH CAUSE OF ACTION

25 (Alternative Declaratory Relief Regarding Application of the Pollution Exclusion Clause)

26 81. In response to the allegations of Paragraph 81, Defendants re-allege and
27 incorporate by reference their responses to the allegations of Paragraphs 1-80.

1 82. Defendants admit the allegations of Paragraph 82.

2 83. Defendants admit the allegations of Paragraph 83.

3 84. Defendants admit the allegations of Paragraph 84.

4 85. Defendants deny generally and specifically each and every allegation of
5 Paragraph 85.

6 RESPONSE TO ELEVENTH CAUSE OF ACTION

7 (Alternative Declaratory Relief Regarding Categorization of Relief Sought
8 or Result Obtained in Underlying Actions)

9 86. In response to the allegations of Paragraph 86, Defendants re-allege and
10 incorporate by reference their responses to the allegations of Paragraphs 1-85.

11 87. Defendants deny generally and specifically each and every allegation of
12 Paragraph 87.

13 88. Defendants deny generally and specifically each and every allegation of
14 Paragraph 88.

15 89. Defendants deny generally and specifically each and every allegation of
16 Paragraph 89.

17 RESPONSE TO TWELFTH CAUSE OF ACTION

18 (Alternative Declaratory Relief Regarding Categorization of NDEP Reimbursement)

19 90. In response to the allegations of Paragraph 90, Defendants re-allege and
20 incorporate by reference their responses to the allegations of Paragraphs 1-89.

21 91. Defendants admit the allegations of Paragraph 91.

22 92. Defendants deny generally and specifically each and every allegation of
23 Paragraph 92.

24 93. Defendants deny generally and specifically each and every allegation of
25 Paragraph 93.

26 ...

27 ...

RESPONSE TO THIRTEENTH CAUSE OF ACTION

(Alternative Declaratory Relief Regarding Monetary Limits of Coverage)

94. In response to the allegations of Paragraph 94, Defendants re-allege and incorporate by reference their responses to the allegations of Paragraphs 1-93.

95. Defendants deny generally and specifically each and every allegation of Paragraph 95.

96. In response to the allegations of Paragraph 96, Defendants admit that the 1981 PEIC Policy contains the language set out in said Paragraph. Defendants deny generally and specifically each and every other allegation of said Paragraph 96.

97. Defendants deny generally and specifically each and every allegation of Paragraph 97.

98. Defendants deny generally and specifically each and every allegation of Paragraph 98.

RESPONSE TO FOURTEENTH CAUSE OF ACTION

(Alternative Declaratory Relief Regarding Additional-Insured Endorsement Form)

99. In response to the allegations of Paragraph 99, Defendants re-allege and incorporate herein by reference their responses to the allegations of Paragraphs 1-98.

100. Defendants deny generally and specifically each and every allegation of Paragraph 100.

101. Defendants admit the allegations of Paragraph 101.

102. Defendants deny generally and specifically each and every allegation of Paragraph 102.

103. In response to the allegations of Paragraph 103, Defendants admit that the 1981 PEIC Policy contains the language included in said Paragraph. Defendants deny generally and specifically each and every other allegation of Paragraph 103.

104. Defendants deny generally and specifically each and every allegation of Paragraph 104.

1 THIRD AFFIRMATIVE DEFENSE

2 (Failure to Mitigate Damages)

3 Plaintiff failed, neglected and refused to mitigate its alleged damages and therefore is
4 barred from recovery or, alternatively, Plaintiff's recovery must be reduced to the extent of its
5 failure to mitigate.

6 FOURTH AFFIRMATIVE DEFENSE

7 (Estoppel)

8 The Complaint herein is barred by reasons of acts, omissions, representations and
9 courses of conduct by Plaintiff upon which these answering Defendants were led to rely to their
10 detriment, thereby barring under the Doctrine of Equitable Estoppel any causes of action
11 asserted by Plaintiff.

12 FIFTH AFFIRMATIVE DEFENSE

13 (Laches)

14 Plaintiff's Complaint is barred by the equitable Doctrine of Laches.

15 SIXTH AFFIRMATIVE DEFENSE

16 (Waiver)

17 Plaintiff has waived each and every alleged claim against these answering Defendants
18 as set forth in the Complaint. Plaintiff has engaged in conduct and activities sufficient to
19 constitute a waiver of any purported rights or entitlements as set forth in the Complaint.

20 SEVENTH AFFIRMATIVE DEFENSE

21 (Unclean Hands)

22 By virtue of Plaintiff's unlawful, immoral, careless, negligent and other wrongful conduct,
23 Plaintiff should be barred from recovering against these answering Defendants under the
24 equitable doctrines of "Unclean Hands" and of in pari delicto.

25 EIGHTH AFFIRMATIVE DEFENSE

26 (Statute of Limitations)

27 Plaintiff's causes of action are time barred under all applicable statutes of limitations.

1 NINTH AFFIRMATIVE DEFENSE

2 (Additional Affirmative Defenses)

3 These answering Defendants presently have insufficient knowledge or information upon
4 which to form a belief as to whether they may have additional, as yet unstated, affirmative
5 defenses available. Accordingly, these answering Defendants reserve the right to assert
6 additional affirmative defenses in the event discovery indicates that they would be appropriate.

7 PRAYER FOR RELIEF

8 Wherefore, Defendants pray that Plaintiff takes nothing by its Complaint herein, that
9 Defendants be awarded their costs of suit and for such other and further relief as the Court
10 deems just and proper.

11 Dated: Monday, August 9, 2010.

12 Robert G. Russell, Jr.
13 Scott R. Omohundro
14 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, and
LAW OFFICES OF STEVEN J. PARSONS

15 /s/ Steven J. Parsons
STEVEN J. PARSONS
Nevada Bar No. 363

16 Attorney for Defendants
17 THE HERMAN KISHNER TRUST; IRWIN KISHNER,
18 as Trustee for the Herman Kishner Trust; JERRY
19 ENGEL, as Trustee for the Herman Kishner Trust;
20 BANK OF AMERICA, N.A., as Trustee for the
Herman Kishner Trust; MARYLAND SQUARE
SHOPPING CENTER, LLC

21 CERTIFICATE OF SERVICE BY E-FILEING

22 I hereby certify that service of the foregoing Defendants' Answer was made upon Amy
23 K. Thomas of WOLKIN CURRAN, LLP by e-filing with the Court's CM/ECF system, duly noting that
24 on a prior e-filing by Plaintiff, she has been noted as receiving copies from the court by e-filing
25 and that she has consented to be served in that manner.

26 Dated: Monday, August 9, 2010.

27 /s/ Cheryl A. Reed
An Employee of LAW OFFICES OF STEVEN J. PARSONS